

AMENDED IN ASSEMBLY FEBRUARY 14, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 263

Introduced by Assembly Member Rodriguez

January 31, 2017

An act to add Sections 226.9 and 6401.9 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL’S DIGEST

AB 263, as amended, Rodriguez. Emergency medical services workers: rights and working conditions.

Existing law, the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act, governs local emergency medical service systems *and plans* and establishes the Emergency Medical Services Authority, which is responsible for the coordination and integration of all state activities concerning emergency medical services. Existing law provides that emergency medical personnel have specified due process rights when they are subject to suspension or termination for disciplinary cause or reason, as defined.

~~The California Occupational Safety and Health Act of 1973 has the purpose of assuring safe and healthful working conditions for all California workers by authorizing the enforcement of effective standards, assisting and encouraging employers to maintain safe and healthful working conditions, and by providing for research, information, education, training, and enforcement in the field of occupational safety and health.~~

Existing law prohibits an employer from requiring an employee to work during a meal or rest or recovery period mandated by an applicable statute, or an applicable regulation, standard, or order of

the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

Under existing law, the Occupational Safety and Health Standards Board within the Department of Industrial Relations promulgates occupational safety and health standards for the state. Under existing law, the Division of Occupational Safety and Health is required to enforce all occupational safety and health standards, as specified. A violation of these standards and regulations under specific circumstances is a crime.

This bill would ~~declare the intent of the Legislature to enact legislation relating to the rights and working conditions of emergency medical services workers.~~ require an employer that provides emergency medical services as part of an emergency medical services system or plan to authorize and permit its employees to take prescribed rest periods.

The bill would require the standards board, no later than July 1, 2019, to adopt standards developed by the division that require any employer that provides emergency medical services as part of emergency medical service system or plan to adopt a workplace violence prevention plan as a part of the employer's injury and illness prevention plan to protect system workers from aggressive and violent behavior. The bill would require the standards to include prescribed elements. The bill would require the division and the authority, by January 1, 2020, and annually thereafter, to post a report on their respective Internet Web sites containing specified information regarding violent incidents at hospitals.

The bill would exempt certain public employers from these provisions.

Because this bill would expand the scope of a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 226.9 is added to the Labor Code, to read:*

1 226.9. (a) An employer that provides emergency medical
2 services as part of an emergency medical services system or plan,
3 as defined in Division 2.5 (commencing with Section 1797) of the
4 Health and Safety Code, shall authorize and permit its employees
5 to take rest periods, which, to the extent practicable, shall be in
6 the middle of each work period. The duration of the authorized
7 rest period shall be based on the total hours worked daily at the
8 rate of 10 minutes net rest time per four hours or major fraction
9 thereof. However, a rest period need not be authorized for an
10 employee whose total daily work time is less than three and
11 one-half hours. Authorized rest period time shall be counted as
12 hours worked for which there shall be no deduction from wages.

13 (b) During the authorized rest period set forth in subdivision
14 (a), an employer shall relieve an employee of all duties and
15 relinquish control over how the employee spend his or her time,
16 and shall not require that employees remain on call.

17 (c) If an employer fails to provide an employee a rest period as
18 specified in this section, the employer shall pay the employee one
19 hour of pay at the employee's regular rate of compensation for
20 each workday during which the rest period is not provided.

21 (d) This section shall not apply to employees directly employed
22 by the state or any political subdivision thereof, including any city,
23 county, or special district.

24 SEC. 2. Section 6401.9 is added to the Labor Code, to read:

25 6401.9. (a) As used in this section:

26 (1) "EMS provider" means an employer that provides
27 emergency medical services as part of an emergency medical
28 services system or plan as defined in Division 2.5 (commencing
29 with Section 1797) of the Health and Safety Code.

30 (2) "EMS employee" means an employee of an EMS provider,
31 as defined in paragraph (1).

32 (b) The standards board, no later than July 1, 2019, shall adopt
33 standards developed by the division that require any employer
34 that provides emergency medical services as part of an emergency
35 medical services system or plan as defined in Division 2.5
36 (commencing with Section 1797) of the Health and Safety Code,
37 to adopt a workplace violence prevention plan as a part of its
38 injury and illness prevention plan to protect emergency medical
39 system workers from aggressive and violent behavior.

1 (c) *The standards adopted pursuant to subdivision (b) shall*
2 *include all of the following:*

3 (1) *A requirement that the workplace violence prevention plan*
4 *be in effect at all times in all areas where emergency medical*
5 *services are provided.*

6 (2) *A definition of workplace violence that includes, but is not*
7 *limited to, both of the following:*

8 (A) *The use of physical force against an EMS employee by a*
9 *patient or a person accompanying a patient that results in, or has*
10 *a high likelihood of resulting in, injury, psychological trauma, or*
11 *stress, regardless of whether the employee sustains an injury.*

12 (B) *An incident involving the use of a firearm or other dangerous*
13 *weapon, regardless of whether the employee sustains an injury.*

14 (3) *A requirement that a workplace violence prevention plan*
15 *include, but not be limited to, all of the following:*

16 (A) *Personnel education and training policies that require all*
17 *EMS employees who provide direct care to patients to, at least*
18 *annually, receive education and training that is designed to provide*
19 *an opportunity for interactive questions and answers with a person*
20 *knowledgeable about the workplace violence prevention plan. The*
21 *education and training shall cover topics that include, but are not*
22 *limited to, the following topics:*

23 (i) *How to recognize potential for violence, and when and how*
24 *to seek assistance to prevent or respond to violence.*

25 (ii) *How to report violent incidents to law enforcement.*

26 (iii) *Any resources available to employees for coping with*
27 *incidents of violence, including, but not limited to, critical incident*
28 *stress debriefing or employee assistance programs.*

29 (B) *A system for responding to, and investigating violent*
30 *incidents and situations involving violence or the risk of violence.*

31 (C) *A system to, at least annually, assess and improve upon*
32 *factors that may contribute to, or help prevent workplace violence,*
33 *including, but not limited to, the following factors:*

34 (i) *Staffing, including staffing patterns and patient classification*
35 *systems that contribute to, or are insufficient to address, the risk*
36 *of violence.*

37 (ii) *Sufficiency of security systems, including alarms, emergency*
38 *response, and security personnel availability.*

39 (iii) *Job design, equipment, and facilities.*

1 (iv) *Security risks associated with specific emergency medical*
2 *services units.*

3 (4) *A requirement that all workplace violence prevention plans*
4 *be developed in conjunction with affected employees, including*
5 *their recognized collective bargaining agents, if any.*

6 (5) *A requirement that all temporary personnel be oriented to*
7 *the workplace violence prevention plan.*

8 (6) *Provisions prohibiting an EMS provider from disallowing*
9 *an EMS employee from, or taking punitive or retaliatory action*
10 *against an EMS employee for, seeking assistance and intervention*
11 *from local emergency services or law enforcement when a violent*
12 *incident occurs.*

13 (7) *A requirement that EMS providers document, and retain for*
14 *a period of five years, a written record of any violent incident*
15 *against an EMS employee, regardless of whether the employee*
16 *sustains an injury, and regardless of whether the report is made*
17 *by the EMS employee who is the subject of the violent incident or*
18 *any other employee.*

19 (8) *A requirement that an EMS provider report violent incidents*
20 *to the division. If the incident results in injury, involves the use of*
21 *a firearm or other dangerous weapon, or presents an urgent or*
22 *emergent threat to the welfare, health, or safety of EMS employees,*
23 *the EMS provider shall report the incident to the division within*
24 *24 hours. All other incidents of violence shall be reported to the*
25 *division within 72 hours.*

26 (d) *By January 1, 2020, and annually thereafter, the division,*
27 *in a manner that protects patient and employee confidentiality,*
28 *shall post a report on its Internet Web site containing information*
29 *regarding violent incidents involving EMS providers, that includes,*
30 *but is not limited to, the total number of reports, and which specific*
31 *employers filed reports, pursuant to paragraph (8) of subdivision*
32 *(c), the outcome of any related inspection or investigation, the*
33 *citations levied against an employer based on a violent incident,*
34 *and recommendations of the division on the prevention of violent*
35 *incidents involving EMS providers. The Emergency Medical*
36 *Services Authority, as established in Article 1 (commencing with*
37 *Section 1797.100) of the Health and Safety Code, shall also post*
38 *annually a report on its Internet Web site meeting the same*
39 *specifications.*

1 (e) *This section does not limit the authority of the standards*
2 *board to adopt standards to protect employees from workplace*
3 *violence. Nothing in this section shall be interpreted to preclude*
4 *the standards board from adopting standards that require other*
5 *employers, including, but not limited to, employers exempted from*
6 *this section by subdivision (f), to adopt plans to protect employees*
7 *from workplace violence. Nothing in this section shall be*
8 *interpreted to preclude the standards board from adopting*
9 *standards that require an employer subject to this section, or any*
10 *other employer, to adopt a workplace violence prevention plan*
11 *that includes elements or requirements additional to, or broader*
12 *in scope than, those described in this section.*

13 (f) *This section shall not apply to the state or any political*
14 *subdivision thereof, including any city, county, or special district,*
15 *in its capacity as the direct employer of an EMS employee.*

16 SEC. 3. *No reimbursement is required by this act pursuant to*
17 *Section 6 of Article XIII B of the California Constitution because*
18 *the only costs that may be incurred by a local agency or school*
19 *district will be incurred because this act creates a new crime or*
20 *infraction, eliminates a crime or infraction, or changes the penalty*
21 *for a crime or infraction, within the meaning of Section 17556 of*
22 *the Government Code, or changes the definition of a crime within*
23 *the meaning of Section 6 of Article XIII B of the California*
24 *Constitution.*

25 ~~SECTION 1. It is the intent of the Legislature to enact~~
26 ~~legislation relating to the rights and working conditions of~~
27 ~~emergency medical services workers.~~